

**IC 36-9-40****Chapter 40. County Funding of Sewage Disposal Systems****IC 36-9-40-1****Application of chapter**

Sec. 1. This chapter applies to counties.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-2****Definitions**

Sec. 2. For purposes of this chapter:

- (1) "Sewage disposal system" has the meaning set forth in IC 13-11-2-201.
- (2) "System" refers to a sewage disposal system.
- (3) "Works board" refers to the works board of a county.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-3****Installation**

Sec. 3. A county may install private sewage disposal systems under this chapter.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-4****Construction of system on private land**

Sec. 4. A works board may construct a private system on land owned by a private entity if:

- (1) the owner of the land has applied to the works board for construction of a system that the works board determines is appropriate for the sewage disposal needs of the location for which the application is made;
- (2) the owner of the land has supplied in the application to the works board sufficient information to prepare a preliminary resolution to approve construction of the system;
- (3) the works board has adopted a preliminary resolution approving construction of the system; and
- (4) with respect to the system, the works board has, at the time the preliminary resolution is adopted, adopted and placed on file:

- (A) cross-sections;
- (B) general plans;
- (C) specifications; and
- (D) an estimate of the cost.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-5****Estimate of cost of system**

Sec. 5. (a) The estimate of cost of the system required under section 4(4)(D) of this chapter may include all incidental, inspection, and engineering costs caused by the proposed construction. However,

the estimate of the costs to be paid by special assessment may not include the following:

(1) Salaries and expenses of the necessary and regularly employed personnel of the engineering department of the county.

(2) Ordinary operating costs of the works board.

(b) If the works board determines that it is necessary to employ additional engineering services for construction of a particular system, the works board may include in the estimate of cost of the system required under section 4(4)(D) of this chapter the cost of the additional service actually performed in connection with the system.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-6**

##### **Incidental, inspection, and engineering costs as part of cost of construction**

Sec. 6. (a) The works board may add to the cost of construction of a system under this chapter and may include in the assessment against the property on which the system is constructed the incidental, inspection, and engineering costs that are authorized by the preliminary resolution and included in the estimate.

(b) The amount of incidental, inspection, and engineering costs included in the assessment may not exceed the amount of the incidental, inspection, and engineering costs included in the estimate.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-7**

##### **Notice of hearing**

Sec. 7. (a) Notice of a hearing on the preliminary resolution approving construction of the system shall be published in accordance with IC 5-3-1. The notice must state:

(1) that the works board has adopted the preliminary resolution; and

(2) the time and place at which the works board will do the following:

(A) Hear all interested persons.

(B) Decide whether the benefits to the property liable to be assessed for construction of the system will equal the estimated cost of construction of the system.

(b) The works board shall send a notice containing the information required under subsection (a) to the property owner that applied for construction of the system.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-8**

##### **Filing of cost estimate by county engineer; limitation on entry into contract**

Sec. 8. (a) At least ten (10) days before the date fixed for a hearing under section 7 of this chapter, the engineer of the county shall file with the works board an estimate of the maximum cost of

construction of the system proposed by the works board.

(b) A county may not enter into a contract under the preliminary resolution if the contract exceeds the engineer's estimate filed under subsection (a).

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-9**

##### **Works board conduct of hearing; limitation on further action**

Sec. 9. (a) At the hearing specified in the notice under section 7 of this chapter, the works board shall do the following:

- (1) Hear interested persons.
- (2) Decide whether the benefits that will accrue to the property liable to be assessed for construction of the system will equal the maximum estimated cost of construction of the system.
- (3) Determine the assessment against the property on which the system is constructed in an amount that does not exceed the engineer's estimate under section 8 of this chapter.

(b) If the works board finds that the benefits will not equal the maximum estimated cost of construction of the system, the board shall take no further action.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-10**

##### **Special assessment levy; limitation on amount**

Sec. 10. (a) The works board shall levy special assessments for the amount determined under section 9 of this chapter if:

- (1) the contract for construction of the system is executed; and
- (2) the system is constructed.

(b) The special assessments levied under this section may not exceed the cost of construction of the system.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-11**

##### **Works board action on preliminary resolution; effect of modified or confirmed resolution**

Sec. 11. (a) After the works board determines the amount of special benefits that will accrue to the property liable to be assessed for construction of the system, the works board may do any of the following:

- (1) Confirm the preliminary resolution.
- (2) Modify the preliminary resolution.
- (3) Rescind the preliminary resolution.

(b) The preliminary resolution is final and conclusive on all parties if:

- (1) the preliminary resolution is modified or confirmed under this section; and
- (2) construction of the system is ordered.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-12**

**Works board advertisement for bids and performance of work**

Sec. 12. If the works board finally orders construction of a system, the works board shall advertise for bids and perform the work under IC 36-1-12.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-13****Construction contract for entire system; challenge to contract**

Sec. 13. (a) The contract for construction of a system must be for construction of the entire system.

(b) After the execution of a contract for construction of a system, the validity of the contract may be questioned only in an action to enjoin the performance of the contract. This action must be brought before the actual commencement of work under the contract.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-14****Contractor guarantee of workmanship and materials**

Sec. 14. (a) A contractor for construction of a system must guarantee the contractor's workmanship and all materials used in the work.

(b) The guarantee required under subsection (a) must be in the following form:

"The contractor warrants the contractor's workmanship and all materials used in the work and agrees that during the guarantee period specified, the contractor will, at the contractor's own expense, make all repairs that may become necessary by reason of improper workmanship or defective materials. The maintenance obligation, however, does not include repair of any damage resulting from any force or circumstance beyond the control of the contractor, nor is the contractor a guarantor of the plans and specifications furnished by the county."

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-15****County and contractor responsibilities for sytem repairs**

Sec. 15. (a) If repairs to a system become necessary, the county must give written notice to the contractor to make the repairs. If the contractor fails to begin the repairs not later than thirty (30) days after the notice is received, the county may do the following:

- (1) Make the repairs using the county's own employees or an independent contractor.
- (2) Recover from the contractor and the contractor's sureties the reasonable cost of the repairs and the cost of the supervision and inspection of the repairs.

(b) At the expiration of the guarantee period, the county has sixty (60) days in which to notify the contractor of any necessary repairs.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-16**

**Acceptance of system by works board**

Sec. 16. A system that is completed according to contract must be accepted by the works board.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-17****Assessment of property on which system is constructed; effect of mistake in name of owner**

Sec. 17. (a) As soon as a contract for construction of a system has been completed, the works board shall have an assessment prepared for the property on which the system is constructed. The property on which the system is constructed is liable for assessment under this chapter.

(b) The assessment must include the following:

(1) The name of the owner of the property on which the system is constructed.

(2) A description of the property, or the key number or parcel number of the property.

(3) The total assessment, if any, against the property.

(c) A mistake in the name of the owner or the description of property does not void the assessment or lien against the property.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-18****Presumptions with respect to assessment; assessment notice to property owner**

Sec. 18. (a) The following apply to the assessment indicated against each lot, tract, or parcel of land:

(1) The assessment is presumed to be the special benefit to the lot, parcel, or tract of land.

(2) The assessment is the final and conclusive assessment unless the assessment:

(A) exceeds the engineer's estimate under section 8 of this chapter; and

(B) is challenged under section 19 of this chapter.

(b) Immediately after the assessment roll is completed and filed, the works board shall notify in writing the owner of the property on which the system is constructed:

(1) of the assessment amount;

(2) that the basis of the assessment amount is on file and may be inspected at the works board's office; and

(3) of the time and date before which an objection must be filed with the works board.

*As added by P.L.7-2002, SEC.1.*

**IC 36-9-40-19****Works board hearing and decision on objection to assessment**

Sec. 19. (a) If an objection is filed before the time prescribed in section 18 of this chapter, the works board shall set a hearing.

(b) After the hearing, the works board shall sustain or modify the

assessment by confirming, increasing, or reducing the presumptive assessment. The works board's decision must be based on the works board's findings concerning the special benefits that the property has received or will receive on account of construction of the system.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-20**

##### **Delivery of assessment to county assessor**

Sec. 20. When the assessment is completed, the works board shall deliver the assessment to the county assessor.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-21**

##### **Delivery of completed assessment to county auditor; assessment to show amount due**

Sec. 21. (a) The works board shall deliver a certified copy of the completed assessment to the county auditor after the works board:

- (1) approves and accepts the entire work under any contract; and
- (2) allows a final estimate.

(b) The duplicate assessment, to be known as the primary assessment, must show the amount due if paid in cash within the time limit.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-22**

##### **County auditor notice of assessment to affected person; installment payments**

Sec. 22. (a) Upon receipt of the primary assessment, the county auditor shall by mail notify the affected person of the amount of the assessment against the person's property.

(b) The notice must state the following:

- (1) That the amount is due not later than thirty (30) days after the approval of the assessment by the works board.
- (2) That a person who desires to pay the person's assessment by installments must enter into a written agreement under subsection (c) before the due date.

(c) A person who desires to pay the person's assessment in twenty (20) equal semiannual installments must before the due date enter into a written agreement stating that in consideration of that privilege the person:

- (1) will not make an objection to an illegality or irregularity regarding the assessment against the person's property; and
- (2) will pay the assessment as required by law with specified interest.

(d) The agreement under subsection (c) shall be filed in the office of the county auditor. If a property owner elects to pay the property owner's assessments in installments, the assessment shall be entered for collection on the duplicate, shall have the same priority and rights, and shall be collected in the same manner as other taxes.

(e) The interest rate for the installments of the assessment is the interest rate established in IC 6-1.1-37-9.

(f) An assessment of less than one hundred dollars (\$100) may not be paid in installments.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-23**

##### **Assessment due date; interest on delinquent assessment**

Sec. 23. (a) The entire assessment is payable in cash without interest not later than thirty (30) days after the approval of the assessment by the works board if an agreement has not been signed and filed under section 22 of this chapter.

(b) If the assessment is not paid when due, the total assessment becomes delinquent and bears interest at the rate prescribed by IC 6-1.1-37-9 per year from the date of the final acceptance of the completed system by the works board.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-24**

##### **County auditor receipt and accounting for assessment payments; use of proceeds; special fund**

Sec. 24. (a) The county auditor shall do the following:

(1) Receive the payment of assessment installments.

(2) Keep all accounts and give proper vouchers for the payment of assessment installments.

(b) Proceeds arising from assessments for the payment of a particular system may not be diverted to the payment of any other system.

(c) The proceeds from assessments for the payment of a particular system constitute a separate special fund.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-25**

##### **Assessment installment payments due upon delinquency; collection of delinquent installments**

Sec. 25. Failure to pay an installment of principal or interest when the installment is due makes all installments of principal yet unpaid due and payable immediately, unless the unpaid installment of principal or interest is paid within the grace period provided. The county shall proceed to collect delinquent installments as delinquent taxes are collected.

*As added by P.L.7-2002, SEC.1.*

#### **IC 36-9-40-26**

##### **Supplementary proceedings to correct defect or irregularity in contract**

Sec. 26. If a defect or an irregularity results in the invalidity of a contract, an assessment, or a lien under this chapter, the defect or irregularity shall be corrected by supplementary proceedings that substantially comply with this chapter.

*As added by P.L.7-2002, SEC.1.*